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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,226	11/03/2003	David William Froesel	7371	3104
7590	02/17/2005		EXAMINER	
Paul M. Denk Suite 170 763 S. New Ballas Rd Saint Louis, MO 63141			CHIU, RALEIGH W	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/700,226

Applicant(s)FROESEL, DAVID WILLIAM **Examiner**

Raleigh Chiu

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2004 and 23 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/10/05</u> . | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 3711

DETAILED ACTION

Drawings

1. The drawings were received on 05 November 2004 and 23 November 2004. These drawings are acceptable.

Claim Rejections - 35 USC §§ 102 and 103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-8 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 5,882,010 (Geror).

Regarding claims 1-7, Figures 1-3 of Geror shows the recited integrally molded square box with base 20, sidewalls 18

Art Unit: 3711

and upstanding sleeve 14. Figures 1 and 3 also show the sleeve having an upper opening inherently capable of accommodating the insertion and removal of a metal paint can. It is noted here that the container (metal paint can) is only functionally recited and not positively claimed as being within the scope of the claims.

Regarding claim 8, Figure 8 best shows the doubly formed walls.

Regarding claim 12, Geror discloses the use of a pair of boxes spaced about 30 feet apart. Such a distance is considered to be approximately 25 feet apart. See column 3, lines 1-3.

5. Claims 9-11 and 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Geror as applied above in view of U.S. Patent Number 5,909,877 (Bour).

Regarding claim 9, it would have been obvious to one of ordinary skill in the art to provide reinforcement ribs beneath the Geror box in view of Bour in order to make the target lightweight, yet rigid. See Bour at column 3, line 53 through column 4, line 14.

Regarding claims 10 and 11, Geror discloses apertures 36 near the base corners to secure the box to the ground. See Figure 2 and column 2, lines 34-40.

Art Unit: 3711

Regarding claim 13, the size of the sleeve opening clearly affects the chance of a successful toss. Discovering an optimum value for a result-effective variable has been held to be within the capabilities of the person having ordinary skill in the art. As such, it would have been obvious to a person of ordinary skill, by routine experimentation, to modify the diameter of the Geror sleeve to be greater than five inches to vary the difficulty of the game. Further, containers are well-known in the art to have diameters greater than five inches and are inherently capable of being inserted into the modified Geror sleeve.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (703) 308-2247. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich, can be reached on (703) 308-1513.

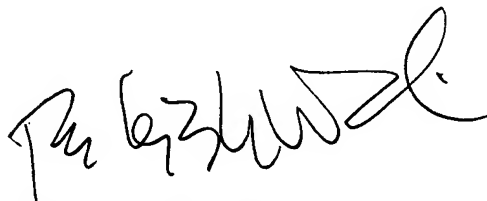
The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval

Art Unit: 3711

(PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. Chiu', with a stylized flourish at the end.

Raleigh W. Chiu
Primary Examiner
Technology Center 3700

RWC:dei:feif
16 February 2005